

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

High-Cost Universal Service Support

Federal-State Joint Board on Universal Service

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WC Docket No. 05-337

CC Docket No. 96-45

To: The Joint Board

**REPLY COMMENTS OF
SOUTHERNLINC WIRELESS**

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SUMMARY

In considering any permanent reforms to the high-cost support mechanism created by the Telecommunications Act of 1996 (the “Act”), the Joint Board should ensure that its recommendations are consistent with the explicit terms of the Act. Under the Act, support must be “explicit” and “sufficient” to ensure, among other things, that the choices available to consumers in rural, insular and high-cost areas with respect to diversity of service providers and types of service are reasonably comparable, including in terms of price, to the choices available to urban consumers.

SouthernLINC Wireless agrees with numerous commenting parties that the best way to achieve the goals of the Act while controlling fund growth is to target aid solely to those geographic areas where it is truly needed and then to phase-out support once it is no longer needed. Specifically, SouthernLINC Wireless agrees with parties who support the mandatory disaggregation of support below the study area or wire level center, and the use of models and other forms of targeting to calculate the need for support at a more accurate, granular level in currently under-funded areas. SouthernLINC Wireless also agrees that the support for consumers in high-cost areas should be targeted based on the forward looking costs of serving those areas. For example, the use of geographic information systems (“GIS”) technology to overlay density and infrastructure information would allow the Commission to assess a variety of factors affecting telecommunications deployment and subscribership. No matter which proposal the Joint Board recommends, the distribution mechanism must be competitively neutral and support areas must be defined equally for all types of carriers.

In order to ensure that support is phased-out when it is no longer necessary, SouthernLINC Wireless proposes that the universal service mechanism should provide *full*

support in each small and competitively-neutral area established by the Commission following disaggregation and fund retargeting until the area is served by the ILEC and three competitive eligible telecommunications carriers (“ETCs”). Entry of a fourth ETC would trigger the phasing-out of support to all ETCs serving that geographic area, including the ILEC, because the presence of the ILEC and three competitive ETCs would demonstrate that support is no longer necessary for that area. Under the proposed phase-out schedule, Tier I CMRS providers would no longer be eligible for support two years after the end of the quarter in which the fourth competitive ETC begins serving the entire geographic area. Tier II CMRS providers would no longer be eligible for support four years after the end of the quarter in which the fourth competitive ETC begins serving the entire geographic area. Finally, six years after the end of the quarter in which the fourth competitive ETC begins serving the entire geographic area, the ILEC and all other competitive ETCs would no longer be eligible for support from the universal service fund. In addition to the scheduled phasing-out of support, the Commission should create a safety valve procedure so support would continue to be available to any ILEC or competitive ETCs which can demonstrate that continued support is necessary to further the goals of the universal service provision of the Act and to prevent harm to consumers in that area.

SouthernLINC Wireless joins the many commenting parties who urge the Joint Board and the Commission to retain the identical support rule, because the burdens of abandoning the rule would outweigh the benefits. Finally, SouthernLINC Wireless agrees that the Joint Board should focus first on fundamentally reforming the distribution methodology before considering the legality and desirability of supporting, or mandating the provision of, broadband services.

TABLE OF CONTENTS

I.	ALL REFORMS MUST BE CONSISTENT WITH THE REQUIREMENTS OF THE UNIVERSAL SERVICE PROVISIONS OF THE TELECOMMUNICATIONS ACT OF 1996.....	2
II.	THE COMMISSION SHOULD TARGET SUPPORT TO GEOGRAPHIC AREAS WHERE SUPPORT IS NECESSARY, AND PHASE-OUT SUPPORT WHEN NO LONGER NEEDED.....	4
A.	Support Should Be Distributed at as Granular a Level as Possible to Ensure that Funds Are Used Only in Geographic Areas Where It Is Truly Needed	5
1.	The Commission Should Use a Combination of Disaggregation and Retargeting to Establish Small, Neutral, High-Cost Service Areas	6
2.	Disaggregation and Retargeting of Universal Service Support Areas Should Be Done In A Competitively Neutral Manner	8
B.	All Qualified ETCs Should Be Supported In High-Cost Markets, but Relief Should Be Phased Out When Competition Levels Demonstrate Support Is No Longer Necessary	10
C.	The Commission Should Streamline ETC Designation Process	13
III.	THE IDENTICAL SUPPORT RULE SHOULD BE RETAINED	14
IV.	UNIVERSAL SERVICE FUNDS SHOULD NOT BE USED FOR BROADBAND SUPPORT, AND SUPPORT SHOULD NOT BE CONTINGENT ON OFFERING BROADBAND SERVICES	15
V.	CONCLUSION	18

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REPLY COMMENTS OF SOUTHERNLINC WIRELESS

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless (“SouthernLINC Wireless”) hereby submits these reply comments in the above-captioned docket.¹ SouthernLINC Wireless operates a commercial digital 800 MHz ESMR system using Motorola’s proprietary Integrated Digital Enhanced Network (iDEN) technology to provide dispatch, interconnected voice, Internet access, and data transmission services over mobile phone handsets. SouthernLINC Wireless is licensed by the Commission to provide cellular communications services in Alabama, Florida, Georgia, and Mississippi, where it serves nearly 300,000 subscribers over 127,000 square miles. SouthernLINC Wireless offers the most comprehensive geographic coverage of any mobile wireless provider in Alabama and Georgia, servicing extensive rural territory along with major metropolitan areas and highway corridors, and as such is widely used by local and statewide governmental institutions, public utilities and emergency services.

SouthernLINC Wireless is committed to offering high-quality telecommunications services to rural and underserved areas, and approximately half of the total

¹ In the Matter of High-Cost Universal Service Support; Federal State Joint Board on Universal Service, *Notice of Proposed Rulemaking*, FCC 07-88 (rel. May 14, 2007) (“*USF Cap NPRM*”).

handsets SouthernLINC Wireless serves are used by subscribers located outside of major metropolitan areas. SouthernLINC Wireless is also the wireless service provider to the state of Alabama and to many government agencies in Georgia. In fact, approximately 30% of the total handsets SouthernLINC Wireless serves are used by public employees, first responders or utility personnel,² which illustrates how important the services of SouthernLINC Wireless are to residents in those areas, particularly in times of crises. During the emergency conditions created by the fifteen named hurricanes and countless ice storms that have struck its service territory since SouthernLINC Wireless began operating in 1995, SouthernLINC Wireless was often the only available means of communications. In the aftermath of Hurricane Katrina, for example, SouthernLINC Wireless in many instances provided the only immediate means of communication in Mississippi and Alabama. Accordingly, SouthernLINC Wireless is the type of competitive ETC Congress intended the universal service fund to support and, therefore, has a vested interest in ensuring the fundamental fairness and long-term stability of the fund.

I. ALL REFORMS MUST BE CONSISTENT WITH THE REQUIREMENTS OF THE UNIVERSAL SERVICE PROVISIONS OF THE TELECOMMUNICATIONS ACT OF 1996

In considering any permanent reforms to the high-cost support mechanism created by the Telecommunications Act of 1996 (the “Act”), the Joint Board must ensure that its recommendations are consistent with the explicit terms of the 1996 Act. In particular, any proposed reform must comply with section 254 of the Act, which requires the Commission to base its policies for the preservation and advancement of universal service on several principles, among them that:

[Consumers living] in rural, insular, and high-cost areas, should have access to telecommunications and information services,

² The services provided to utility personnel facilitate the continued availability of power during emergencies.

including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.³

In urban areas, consumers have a wide range of telecommunications choices, both among service types and service providers. Therefore, under section 254, the universal service support distribution mechanism must be designed to ensure that consumers living in rural, insular and high-cost areas have a “reasonably comparable” range of telecommunications choices, both among service types and service providers, and the rates for those services must be reasonably comparable to the rates available in urban areas.⁴

Section 254(b)(5) requires that universal service funding be “specific, predictable and sufficient” to “preserve and advance universal service.” Section 254(e) further mandates that a carrier which receives support “shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of this section.”⁵ Accordingly, the Act prohibits the implementation of any support distribution mechanism that would provide only token or partial support to competitive ETCs. Rather, support must be “specific, predictable and sufficient” to achieve the goals of section 254 – facilitating competitive entry into rural, insular

³ 47 U.S.C. § 254(b)(3).

⁴ The Commission has long recognized the importance of “produc[ing] a robustly competitive market with a diversity of efficient providers serving a variety of consumer needs.” *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, 9 FCC Rcd 7123, ¶ 3 (1994); see also *Application of EchoStar Communications Corporation, (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporation (a Delaware Corporation) (Transferee)*, 17 FCC Rcd 20559, ¶ 96 (2002) (“the public interest is better served by the existence of a diversity of service providers wherever possible.”).

⁵ 47 U.S.C. § 254(e).

and high-cost areas so that consumers in these areas can enjoy choices that are “reasonably comparable” to the choices available to urban consumers.⁶

II. THE COMMISSION SHOULD TARGET SUPPORT TO GEOGRAPHIC AREAS WHERE SUPPORT IS NECESSARY, AND PHASE-OUT SUPPORT WHEN NO LONGER NEEDED

The existing high-cost funding rules suffer three related problems, as Alltel correctly explained in its comments.⁷ First, large ILEC holding companies with multiple “rural” study areas may receive excess funds based on so-called “embedded costs.”⁸ Indeed, as Dobson Cellular stated, many of these ILECs are regulated based on a “rate-of-return system” and, therefore, have incentive to maximize their investment, regardless of efficiency, in order to increase the base upon which their percentage rate of return is calculated.⁹ Secondly, consumers living in similar geographic areas in the study areas of “non-rural” ILECs receive little or no support, as the high-cost region they live in is “averaged in” to the otherwise low-cost region.¹⁰ Finally, even in rural areas, support is distributed on an averaged basis across a generally large rural study area, rather than in a manner that targets funds more narrowly to high-cost portions of those study areas.¹¹ As Embarq explained in its comments, “under the current system there are certain geographic areas that receive too much support, and . . . there are other geographic areas

⁶ See, e.g., *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 11244, ¶ 11 (2001) (adopting the goal of “facilitat[ing] competitive entry into high-cost areas, [and] bringing the benefits of competition to consumers in rural areas”).

⁷ See Alltel Universal Service Reform Proposals at 6 (filed Feb. 16, 2007).

⁸ *Id.*

⁹ Dobson Cellular Comments at 7; see also CTIA Comments at 10.

¹⁰ Alltel Universal Service Reform Proposals at 6 (filed Feb. 16, 2007).

¹¹ *Id.*

that receive insufficient support.”¹² Thus, other issues beyond the overall number of support recipients, competitive or incumbent, have been the drivers of support growth.

Much of the focus over the past few years unfortunately has been on controlling fund growth through artificially limiting eligibility to receive support and imposing arbitrary support caps that would limit the support available for eligible ETCs. Imposing artificial limits on the number of carriers eligible to receive support or the amount of support available to eligible carriers fails to address any of the existing problems. Moreover, controlling fund growth in this manner is fundamentally inconsistent with the universal service provisions of the Act because it deprives consumers in rural, insular and high-cost areas of the benefits Congress intended the universal service fund to foster. The far better way to control fund growth and achieve the goals of the Act is to carefully target aid solely to those geographic areas where it is truly needed, and then phase-out support once it is no longer needed.

A. Support Should Be Distributed at as Granular a Level as Possible to Ensure that Funds Are Used Only in Geographic Areas Where It Is Truly Needed

SouthernLINC Wireless agrees with Sprint-Nextel that high-cost support should be provided only in communities that genuinely need the support,¹³ and it urges the Joint Board to recommend, and the Commission to adopt, a more efficient method of distributing universal service support at as granular a level as possible.

¹² Embarq Interim Cap Comments at 2 (filed Jun. 6, 2007).

¹³ Sprint-Nextel Comments at 19.

1. The Commission Should Use a Combination of Disaggregation and Retargeting to Establish Small, Neutral, High-Cost Service Areas

SouthernLINC Wireless agrees with the many commenters who support the mandatory disaggregation of support below the study area or wire level center.¹⁴ T-Mobile accurately notes that most ILECs have decided *not* to disaggregate their study area, which reflects the conclusion by most rural ILECs that they are better off maintaining high-cost support in relatively lower cost portions of their study area than they would be if they voluntarily disaggregated their study areas.¹⁵ The decision by most ILECs not to disaggregate suggests that the current system is inefficient because support is available to, and distributed in, areas where it may not be necessary.¹⁶ As Corr Wireless correctly points out, the greater the precision with which support is targeted at high-cost areas, the less the entire support program costs while still achieving its goal of universal service.¹⁷ SouthernLINC Wireless agrees with commenting parties like Corr Wireless and the Iowa Utility Board that increased granularity in universal service fund areas would drive support to the high-cost loops where it is needed, and avoid subsidizing areas where support is unnecessary.¹⁸

The use of disaggregation will also ease the concerns voiced by incumbent ETCs about the continued ability of carriers to use revenues from low-cost areas in order to subsidize high-cost areas. As Dobson Cellular notes, if support were targeted on a more granular basis to smaller areas, cross-subsidization would no longer be necessary, and each area would receive

¹⁴ Alltel Universal Service Reform Proposals at 8 (filed Feb. 16, 2007); Corr Wireless at 2; Dobson Cellular Comments at 3; General Communication Comments at 21; Nebraska Public Service Commission Comments at 7; South Carolina Office of Regulatory Staff Comments at 2; T-Mobile Comments at 8.

¹⁵ T-Mobile Comments at 8.

¹⁶ *Id.*

¹⁷ Corr Wireless Comments at 2.

¹⁸ Iowa Utilities Board Comments at 4.

support according to the need for support in that area.¹⁹ Indeed, DialToneServices takes this idea one step further, advocating a granular approach that includes uncertificated geographic areas in the USF distribution process of no larger than a county, along with disaggregation of current ILEC study areas to the sub-wire level.²⁰ SouthernLINC Wireless supports disaggregation to the most granular level possible that would not impose unduly burdensome administrative requirements on carriers.

Disaggregation is different from, and not a substitute for, using models and other forms of targeting to identify geographic areas where support is most needed on a more accurate, granular level.²¹ SouthernLINC Wireless agrees that the universal service distribution methodology should focus on geographic areas where support is needed rather than merely tying support to ILEC study areas. SouthernLINC Wireless joins the numerous commenting parties who support the development of a rational universal service system that would target funds to consumers in high-cost areas based on the forward looking costs of serving those areas.²²

SouthernLINC Wireless also agrees that the use of geographic information systems (“GIS”) technology to overlay density and infrastructure information is one potential tool for retargeting support, because it would allow the Commission to assess a variety of factors affecting telecommunications deployment and subscribership.²³ As pointed out by General

¹⁹ Dobson Cellular Comments at 3.

²⁰ DialTone Comments at 6-7.

²¹ Embarq Comments at 20. For instance, in study areas that currently receive insufficient or zero high-cost support funding due to study area averaging, mandatory disaggregation simply amounts to redistribution of nothing. *Id.* at 20-21.

²² Alltel Reply Comments (filed Nov. 8, 2006); California Public Utilities Commission Comments at 4; ComspanUSA Comments at 8; Dobson Cellular Comments at 5; General Communication Comments at 19; Nebraska Public Service Commission Comments at 6; Sprint Nextel Comments at 18-19; T-Mobile Comments at 7.

²³ California Public Utilities Commission Comments at 4; ComspanUSA Comments at 8; Dobson Cellular Comments at 5; General Communication Comments at 19.

Communication, modern GIS technology and modeling techniques could be a more effective means for identifying and targeting those consumers that truly need high-cost support than the current system.²⁴ Dobson Communications notes that network models can determine the cost of providing wireless service in rural and high-cost areas without requiring a wireless carrier to keep burdensome books of account,²⁵ and the Nebraska Public Service Commission points out that utilizing GIS data already available, such as the locations of roads and urban centers, wireless tower locations, topography, and population density will provide a more complete picture of the marketplace than currently exists.²⁶ Accordingly, SouthernLINC Wireless supports further exploration of the use of cost modeling to determine federal universal service support levels.²⁷

2. Disaggregation and Retargeting of Universal Service Support Areas Should Be Done In A Competitively Neutral Manner

SouthernLINC Wireless agrees with commenting parties who argue that any new distribution mechanism adopted by the Commission must be competitively neutral and that service areas must be defined equally for all types of carriers.²⁸ As U.S. Cellular pointed out, the Joint Board has previously recognized that irregular and oftentimes non-contiguous ILEC boundaries present a significant barrier to entry for competitive carriers.²⁹ At that time, the FCC encouraged states “to consider disaggregating a rural telephone company's study area into service

²⁴ General Communication Comments at 19.

²⁵ Dobson Cellular Comments at 8.

²⁶ Nebraska Public Service Comments at 6.

²⁷ Dobson Cellular Comments at 6 (pointing out that cost modeling is already widely used already to determine federal universal service support levels).

²⁸ CTIA Comments at 8; *see also* Rural Cellular Association and the Alliance of Rural CMRS Carriers Comments at 24-25.

²⁹ U.S. Cellular Comments at 38.

areas composed of the contiguous portions of that study area.”³⁰ SouthernLINC Wireless believes that the implementation of a new distribution mechanism presents an opportunity for the Commission to mandate disaggregation and retargeting of support to these areas without creating any additional disruption beyond that which would already occur with the adoption of any new distribution mechanism.

Numerous other commenting parties have also encouraged the Joint Board to recommend the adoption of smaller, more neutral service areas for distributing universal service support. For example, NCTA points out that neutral service areas would be fairer to cable operators that have traditionally had different service area boundaries from the ILECs, as it is unreasonable to expect that a new entrant will build beyond its existing footprint to match the entire service area of the incumbent.³¹ To correct this problem, NCTA proposes that census block groups might serve as a basis for distributing support.³² Similarly, another group of commenters has recommended that support be distributed along county boundaries, so that all carriers can compete in identical territory.³³ No matter which proposal the Joint Board recommends, and the Commission ultimately adopts, nearly any proposal that creates service areas that are small and competitively neutral would be a significant improvement over the current distribution methodology.

³⁰ Federal-State joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776, ¶ 129 (rel. May 8, 1997).

³¹ NCTA Comments at 6.

³² NCTA Comments at 5.

³³ Rural Cellular Association and the Alliance of Rural CMRS Carriers Comments at 24-25; U.S. Cellular Comments at 38.

B. All Qualified ETCs Should Be Supported In High-Cost Markets, but Relief Should Be Phased Out When Competition Levels Demonstrate Support Is No Longer Necessary

SouthernLINC Wireless agrees with Sprint-Nextel that, in areas where consumers enjoy a genuine choice between service providers, there is no basis for providing high-cost support to carriers that already charge very low rates for basic local service.³⁴ SouthernLINC Wireless urges the Joint Board and the Commission to ensure that support is phased-out when it is no longer necessary.

In most urban areas, consumers have access to the services of the ILEC and at least three competitive service providers.³⁵ SouthernLINC Wireless therefore proposes that the universal service mechanism should provide *full support* in each small, competitively neutral area that will be established by the Commission following disaggregation and retargeting until the area is served by the ILEC and three competitive ETCs. Entry of a fourth ETC would trigger the phasing-out of support to all ETCs serving that geographic area, because the presence of the ILEC and three competitive ETCs would demonstrate that support is no longer necessary for that area.

The proposal is based upon the recognition that support may no longer be necessary to facilitate the goals of the universal service provisions of the Act in areas served by an ILEC and three or more competitors. However, the immediate withdrawal of support could, under certain circumstances, create market shocks that lead to undesirable consequences. Therefore, SouthernLINC Wireless proposes that universal service support should be phased out

³⁴ Sprint-Nextel Comments at 19.

³⁵ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Eleventh Report*, FCC 06-142, ¶41. (rel. Sep. 29, 2006) (“98 percent of the total U.S. population have three or more different operators ... offering mobile telephone service in the counties in which they live. However these counties make up only 68% of the total land area of the United States.”).

over a period of time. Specifically, Tier I CMRS providers would no longer be eligible for support two years after the end of the quarter in which the fourth competitive ETC begins serving the entire geographic area. Tier II CMRS providers would no longer be eligible for support four years after the end of the quarter in which the fourth competitive ETC begins serving the entire geographic area. Finally, six years after the end of the quarter in which the fourth competitive ETC begins serving the entire geographic area, the ILEC and all other competitive ETCs would no longer be eligible for support from the universal service fund.

In addition to the scheduled phasing-out of support, the Commission should create a safety valve procedure so support would continue to be available to any ILEC or competitive ETCs which can demonstrate that continued support is necessary to further the goals of the universal service provisions of the Act and prevent harm to consumers in that area. Specifically, if the phasing out of support in an area would harm consumers in that area by causing prices to rise or service providers to cease service, support should be extended despite the presence of the ILEC and three competitive ETCs. Subsequent ETCs entering the area would not be eligible to receive support under the safety valve absent receiving a waiver of the rules from the Commission. However, the entry of a fourth competitive ETC to the area would again trigger the phasing out of support unless the ETCs currently receiving support could again demonstrate that consumers in the area would be harmed unless support continued.

This proposal has several advantages. First, the proposal encourages entry to rural, insular and high-cost areas, but ends support once competition has taken root and support is no longer necessary to further the Act's goals.³⁶ Specifically, the proposal ensures that support

³⁶ See, e.g., *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶7 (1996) ("By reforming the collection and distribution of universal service funds, the states and the Commission will also

is used to “produce a robustly competitive market with a diversity of efficient providers serving a variety of consumer needs.”³⁷ Second, the proposal is conceptually similar to the impairment test that the Commission adopted to determine eligibility for unbundled network elements, which was upheld by the United States Court of Appeals for the District of Columbia Circuit.³⁸ As such, the proposal would likely withstand judicial scrutiny as a valid means for determining when support was no longer necessary. Finally, the proposal would be competitively neutral³⁹ and “neither unfairly advantage nor disadvantage one provider over another and neither unfairly favor nor disfavor one technology over another.”⁴⁰

The proposal stands in stark contrast to the other proposals that seek to limit (a) the quantity of eligible ETCs, (b) the number of eligible ETCs that actually receive support, or (c) the amount of total support available to eligible ETCs, each of which would be fundamentally inconsistent with the universal service provisions of the Act. The proposal would not only create incentives for eligible ETCs to enter rural, insular and high-cost areas as soon as possible,

ensure that the goals of affordable service and access to advanced services are met by means that enhance, rather than distort, competition.”).

³⁷ *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, 9 FCC Rcd 7123, ¶ 3 (rel. Nov. 18, 1994);.

³⁸ *In the Matter of Unbundled Access to network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533 (rel. Feb. 4, 2005) *aff’d* *Covad Commc’ns Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006); *See also, e.g., Federal State Board on Universal Service*, 18 FCC Rcd 22559, ¶ 136 (rel. Oct. 27, 2003) (“The Commission determined that a wire-center targeting approach best suits the non-rural high-cost support mechanism.”); *Federal-State Joint Board on Universal Service*, 17 FCC Rcd 20716 (2002); *Federal-State Joint Board on Universal Service*, 14 FCC Rcd 20432 (1999), *remanded*, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

³⁹ *See, e.g.,* CTIA Comments at 5 (stressing importance of competitive neutrality); Sprint-Nextel Comments at 10-11 (same); Rural Telephone Group Comments at 5 (same); U.S. Cellular Comments at 19, 33 (same); Missouri Public Service Commission Comments at 10-11 (same); Rural Cellular Association and the Alliance of Rural CMRS Carriers Comments at 32-33 (same).

⁴⁰ *Federal-State Joint Board on Universal Service*, Report and Order, FCC 97-157, ¶ 47 (rel. May 8, 1997).

but also would end support as soon as it is no longer needed. Not only would the proposal control overall fund size, it would also target support to areas where it is most needed. Finally, because all carriers would be eligible for support and treated similarly under the distribution methodology, support will be distributed in a competitively and technologically neutral manner.

C. The Commission Should Streamline ETC Designation Process

SouthernLINC Wireless agrees with CTIA that, in order to maximize competition and ensure that the pool of eligible service providers is as broad as possible, the Commission should act to clarify ETC eligibility criteria, and the ETC designation process should be streamlined.⁴¹ In particular, the Commission must commit itself to acting on all pending ETC applications before the beginning of any USF reform process in order to ensure that competitors can enter high-cost areas, in turn allowing the Commission to quickly begin the proposed USF phase-out process described above.⁴² This concern dovetails with the comments SouthernLINC submitted in response to the proposed interim cap in this same docket: the FCC's current delay in acting on ETC applications presently before it violates the 1996 Act's requirements for ETC certification and frustrates Congress's intent to foster competition.⁴³ Action to improve the ETC certification process is particularly important because, as Comcast noted, any properly designed USF mechanism will replicate the dynamics of a competitive marketplace by rewarding the more efficient providers. Allowing all qualified providers to compete in the new system is the surest

⁴¹ CTIA Comments at 8.

⁴² SouthernLINC Wireless notes that should the Commission instead adopt the "reverse auction" proposed in the Public Notice, rapid approval of new ETCs would also be an important component in ensuring competitive bidding for USF support. However, at this time SouthernLINC Wireless takes no position as to the merits of the "reverse auction" proposal.

⁴³ SouthernLINC Wireless Comments at 4 (filed June 6, 2007).

way to replicate the dynamics of an open market and determine which providers are most efficient, and therefore worthy of support.

III. THE IDENTICAL SUPPORT RULE SHOULD BE RETAINED

SouthernLINC Wireless joins the many commenting parties who urge the Joint Board and the Commission to reject proposals to determine support for competitive ETCs based on their actual or embedded costs.⁴⁴ The expense to industry of requiring a competitive ETC to calculate its costs as a basis for receiving support outweighs the benefits. For instance, ACS Wireless points out that if the identical support rule is abandoned, the FCC will have to adopt a completely new and different accounting system for wireless carriers.⁴⁵ Any such system would have to be monitored both by the company and by the Commission to prevent abuses.⁴⁶ Furthermore, as General Communication noted, a system based on a carrier's own costs essentially duplicates and applies to the competitive ETCs all of the inefficiencies of the ILEC rate-of-return system.⁴⁷ By requiring competitive ETCs to receive funding based on their own costs, the competitive ETC would be rewarded with greater support as its costs increased and would be "penalized" by receiving less support as it reduced costs. This approach is inefficient and creates perverse incentives to *drive up costs*.⁴⁸ Consequently, SouthernLINC Wireless

⁴⁴ See ACS Wireless Comments at 6; Corr Wireless at 4; CTIA Comments at 9; General Communication Comments at 27; Rural Telecom Group Comments at 5; Sprint-Nextel at 19; U.S. Cellular Comments at 19.

⁴⁵ ACS Wireless Comments at 6.

⁴⁶ See GVNW Consulting Comments at 15.

⁴⁷ General Communication Comments at 27; *see also* Dobson Cellular Systems Comments at 7; CTIA Comments at 10.

⁴⁸ *Id.*

agrees with Sprint-Nextel that the use of the ILEC's costs to compute competitive ETC support is the least burdensome and most efficient way to administer the support mechanism.⁴⁹

SouthernLINC Wireless also agrees with Sprint-Nextel that the principle of competitive neutrality mandates the retention of the identical support rule. In *Alenco Communications, Inc. v. FCC*, the Court of Appeals recognized that the universal service program “must treat all market participants equally – for example, subsidies must be portable – so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers.”⁵⁰ Implicit in the concept of portable subsidies is the concept of identical subsidies – otherwise, competing providers would be on different footing (because of the different levels of support) in the marketplace, and competition between those providers would be unfairly skewed.

IV. UNIVERSAL SERVICE FUNDS SHOULD NOT BE USED FOR BROADBAND SUPPORT, AND SUPPORT SHOULD NOT BE CONTINGENT ON OFFERING BROADBAND SERVICES

SouthernLINC Wireless agrees with the many other commenting parties who feel that until issues of expansion of the contributor base are resolved, expanding the use of high-cost funding to broadband is unwise and only further complicates reform efforts.⁵¹ Alexicon notes that the Commission currently has three open dockets related to broadband and advanced telecommunications services that may yet yield further direction related to broadband service support.⁵² Furthermore, given the Joint Board's commitment to making its recommendation on

⁴⁹ Sprint-Nextel Comments at 11-12.

⁵⁰ *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000).

⁵¹ Alexicon Comments at 9; *see* Corr Wireless Comments at 6; NCTA Comments at 3; New Jersey Public Utilities Comments at 12; RICA Comments at 15; RTG Comments at 6; Sprint-Nextel Comments at 17; California Public Utilities Commission at 9; Verizon Comments at 16.

⁵² Alexicon Comments at 9

USF reform in only six months, the process will be contentious and complicated even without the addition of the broadband issue.⁵³ Other parties note that the cost of adding broadband to the list of USF supported services would increase the burden on the universal service system dramatically at a time when the Board is looking to reduce the burden.⁵⁴ SouthernLINC Wireless agrees with these comments and believes that any discussions of broadband support are best left for another day.

The use of universal service funds for broadband support may also have the effect of skewing already existing markets. Some commenting parties have pointed out that many carriers already provide broadband facilities without universal service support.⁵⁵ They argue that adding broadband to the supported services now would disadvantage those carriers by allowing their laggard competitors to catch up using federally supplied funds.⁵⁶ Furthermore, Time Warner Cable points out that the highly competitive environment fostered by the Commission's broadband policies will continue to create incentives for broadband providers to improve and expand their networks, regardless of universal service support.⁵⁷ Therefore, SouthernLINC Wireless believes that the provision of broadband support using universal service funds at the current time would be wasteful as the market is already taking steps to reach currently underserved areas.

⁵³ *Id.*

⁵⁴ Corr Wireless Comments at 5; Sprint-Nextel Comments at 15; Verizon Comments at 16.

⁵⁵ Corr Wireless Comments at 6; Sprint-Nextel Comments at 17; T-Mobile Comments at 11, 13.

⁵⁶ *Id.*

⁵⁷ Time Warner Cable Comments at 11; *see also* T-Mobile Comments at 11 (stating that even without subsidies, numerous carriers like T-Mobile continue to roll out broadband services).

Finally, both Sprint-Nextel and Time Warner Cable raise concerns that the Commission may be statutorily barred from using universal service funds to support broadband services.⁵⁸ Section 254(c) of the 1996 Act limits high-cost universal service support to “telecommunications services” and does not authorize support for “information services.”⁵⁹ The Commission, however, has consistently classified broadband internet access services as “information services” regardless of how they are provided.⁶⁰ Indeed, Time Warner Cable notes that when the Joint Board last considered whether to add broadband to the list of supported services, it concluded that if the Commission classified broadband internet access services as “information services,” then broadband could not be included within the definition of supported services because section 254(c) limits the definition of supported services to “telecommunications services.”⁶¹ The statute has not changed since the Commission reached this conclusion. Although SouthernLINC Wireless does not take a position on the legality of any program to support broadband services with universal service funds, it encourages the Joint Board and the Commission to focus first on fundamentally reforming the distribution methodology. Once the distribution methodology has been reformed and implemented, the

⁵⁸ Sprint-Nextel Comments at 16-17; Time Warner Cable Comments at 7.

⁵⁹ 47 U.S.C. 254.

⁶⁰ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853 (2005), *appeal pending*, *Time Warner Telecom v. FCC*, No. 05-4769 (and consolidated cases) (3rd Cir. filed Oct. 26, 2005); *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002), *aff'd*, *National Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005); *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband Over Power Line Internet Access Service as an Information Service*, 21 FCC Rcd 13281 (2006); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, WT Docket No. 07-53 (rel. Mar. 23, 2007).

⁶¹ Time Warner Cable Comments at 8 (citing *Federal-State Joint Board on Universal Service*, 18 FCC Rcd 2943, ¶ 19 (2002)).

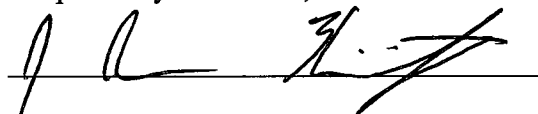
Commission and the Joint Board could seek comment and fully consider the issue, including whether any proposals would be permissible under the universal service provisions of the Act.

V. CONCLUSION

For the reasons set forth above, SouthernLINC Wireless urges the Joint Board to adopt the above recommendations to provide full universal service support in targeted high-cost areas until such time as sufficient competition exists to justify phase-out of the subsidies. Any solution recommended by the Joint Board and adopted by the Commission must comply with the principles of competitive neutrality and the universal service provisions of the Act.

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CERTIFICATE OF SERVICE

I, J. Isaac Himowitz, hereby certify that on this 2nd day of July, 2007, a copy of the foregoing Reply Comments has been served via electronic mail to the following:

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